

(b) Whether an institution or agency meets the conditions for participation in the program;

(c) Whether an individual is qualified for use of the expedited appeals process as provided in § 405.718;

(d) An action regarding compromise of a claim arising under the Medicare program, or termination or suspension of collection action on such a claim under the Federal Claims Collection Act of 1966 (31 U.S.C. 3711). See 20 CFR 404.515 for overpayment claims against an individual, § 405.376 for overpayment claims against a provider, physician or other supplier, and § 408.110 for claims concerning unpaid Medicare premiums;

(e) The transfer or discharge of residents of skilled nursing facilities in accordance with § 483.12 of this chapter; or

(f) The preadmission screening and annual resident review processes required by part 483 subparts C and E of this chapter.

[45 FR 73932, Nov. 7, 1980; 46 FR 24565, May 1, 1981, as amended at 52 FR 22454, June 12, 1987; 52 FR 48123, Dec. 18, 1987; 57 FR 56504, Nov. 30, 1992; 61 FR 63749, Dec. 2, 1996]

#### **§ 405.706 Decisions of utilization review committees.**

(a) *General rule.* A decision of a utilization review committee is a medical determination by a staff committee of the provider or a group similarly composed and does not constitute a determination by the Secretary within the meaning of section 1869 of the Act. The decision of a utilization review committee may be considered by CMS along with other pertinent medical evidence in determining whether or not an individual has the right to have payment made under Part A of title XVIII.

(b) *Applicability under the prospective payment system.* CMS may consider utilization review committee decisions related to inpatient hospital services paid for under the prospective payment system (see part 412 of this chapter) only as those decisions concern:

(1) The appropriateness of admissions resulting in payments under subparts D, E and G of part 412 of this chapter.

(2) The covered days of care involved in determinations of outlier payments under § 412.80(a)(1)(i) of this chapter; and

(3) The necessity of professional services furnished in high cost outliers under § 412.80(a)(1)(ii) of this chapter.

[48 FR 39831, Sept. 1, 1983]

#### **§ 405.708 Effect of initial determination.**

(a) The initial determination under § 405.704 (a) or (b) shall be binding upon the individual on whose behalf payment under part A has been requested or, if such individual is deceased, upon the representative of such individual's estate, unless it is reconsidered in accordance with §§ 405.710 through 405.717 or revised in accordance with § 405.750. Such individual (or the representative of such individual's estate if the individual is deceased) shall be the party to such initial determination.

(b) The initial determination under § 405.704(c) shall be binding upon the provider of services unless it is reconsidered in accordance with §§ 405.710 through 405.717 or revised in accordance with § 405.750. Such provider of services shall be the party to such initial determination.

[55 FR 11021, Mar. 26, 1990, as amended at 62 FR 25855, May 12, 1997]

#### **§ 405.710 Right to reconsideration.**

(a) An individual who is a party to an initial determination, as specified in § 405.704 (a) and (b), (or if such individual is deceased, the representative of such individual's estate) and who is dissatisfied with the initial determination may request a reconsideration of such determination in accordance with § 405.711 regardless of the amount in controversy.

(b) A provider of services who is a party to an initial determination (as specified in § 405.704(c)) and who is dissatisfied with such initial determination may request a reconsideration of such determination in accordance with § 405.711, regardless of the amount in controversy, but only if the individual on whose behalf the request for payment was made has indicated in writing that he does not intend to request reconsideration of the intermediary's initial determination on such request for payment, or if the intermediary has made a finding (see § 405.704(c)) that such individual did not know or could

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not reasonably have been expected to know that the expenses incurred for the items or services for which such request for payment was made were not reimbursable by reason of § 411.15(g) or § 411.15(k).

[55 FR 11021, Mar. 26, 1990]

#### **§ 405.711 Time and place of filing request for reconsideration.**

The request for reconsideration shall be made in writing and filed at an office of the SSA or the CMS or, in the case of a qualified railroad retirement beneficiary (see 20 CFR 404.368) filed at an office of the Railroad Retirement Board, within 60 days after the date of receipt of notice of initial determination, unless such time is extended as provided in § 405.712. A request for reconsideration which is filed with the intermediary which received the request for payment submitted on behalf of the individual is considered to have been filed with the CMS as of the date it is filed with the intermediary. For purposes of this section, the date of receipt of notice of the initial determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

[41 FR 47917, Nov. 1, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 62 FR 25855, May 12, 1997]

#### **§ 405.712 Extension of time to request reconsideration.**

If a party to an initial determination desires to file a request for reconsideration after the time for filing such request in accordance with § 405.711 has passed, such party may file a petition with the SSA or the CMS or, in the case of a qualified railroad retirement beneficiary, with the Railroad Retirement Board, for an extension of time for the filing of such request. Such petition shall be in writing and shall state the reasons why the request for reconsideration was not filed within the required time. For good cause shown, the CMS may extend the time for filing the request for reconsideration.

[37 FR 5814, Mar. 22, 1972. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 62 FR 25855, May 12, 1997]

#### **42 CFR Ch. IV (10–1–05 Edition)**

#### **§ 405.714 Withdrawal of request for reconsideration.**

A request for reconsideration may be withdrawn by the party to the initial determination who filed the request or by his representative provided that the withdrawal is made in writing and filed at an office of the SSA or the CMS or, in the case of a qualified railroad retirement beneficiary, with the Railroad Retirement Board prior to the date of the mailing of the notice of reconsidered determination. A withdrawal filed with the intermediary which received the request for payment submitted on behalf of the individual is considered to have been filed with the CMS as of the date it is filed with the intermediary.

[40 FR 1025, Jan. 6, 1975. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 62 FR 25855, May 12, 1997]

#### **§ 405.715 Reconsidered determination.**

(a) In reconsidering an initial determination, the CMS shall review such initial determination, the evidence and findings upon which such determination was based, and any additional evidence submitted to the SSA or the CMS or otherwise obtained by the intermediary or the CMS; and shall make a determination affirming or revising, in whole or in part, such initial determination.

(b) If the request for reconsideration is filed by an individual with respect to an initial determination specified in § 405.704(b)(12), the provider of services who furnished the items or services shall, prior to the making of the reconsidered determination, be made a party thereto. If pursuant to § 405.710(b) a request for reconsideration is filed by a provider of services with respect to an individual determination under § 405.704(c), the individual who was furnished the items or services shall, prior to the making of the reconsidered determination, be made a party thereto.

[55 FR 11021, Mar. 26, 1990, as amended at 62 FR 25855, May 12, 1997]

#### **§ 405.716 Notice of reconsidered determination.**

Written notice of the reconsidered determination shall be mailed by the CMS to the parties and their representatives at their last known addresses.